

**STATE OF CALIFORNIA – DEPARTMENT OF CONSUMER AFFAIRS  
CALIFORNIA BOARD OF ACCOUNTANCY  
INITIAL STATEMENT OF REASONS**

**Hearing Date:** Friday, June 26, 2020

**Subject Matter of Proposed Regulations:** Disciplinary Guidelines; Substantial Relationship Criteria; Rehabilitation Criteria for Denials, Suspensions, Revocations, Restorations, and Reduction of Penalty; and Directly and Adversely Related Financial Crime Criteria

**Sections Affected:** Title 16, Division 1<sup>1</sup>, Sections 98, 99, 99.1, and 99.2

**Introduction:**

The California Board of Accountancy (CBA) is mandated, pursuant to Business and Professions Code (BPC) section 5000.1, to ensure that the protection of the public is its highest priority in exercising its licensing, regulatory, and disciplinary authority. In achieving this mandate, the CBA regulates the accounting profession for the protection of the public. The CBA currently regulates over 108,000 licensees, including individual Certified Public Accountants/Public Accountants (CPAs/PAs), accountancy partnerships and accountancy corporations.

Pursuant to BPC section 5010, the CBA may adopt, repeal, or amend such regulations as may be reasonably necessary and expedient for the orderly conduct of its affairs and for the administration of the Accountancy Act. This proposal is intended to implement, interpret or make specific the provisions of Assembly Bill (AB) No. 2138 (Chiu and Low, Chapter 995) and concurrently update the Disciplinary Guidelines through the regulatory process.

**Problems being addressed:**

On September 30, 2018, Governor Brown approved AB 2138, which amends the BPC relating to licensing professions and vocations by boards within the Department of Consumer Affairs (DCA), effective July 1, 2020. Specifically, AB 2138 makes changes to BPC provisions relating to a board's authority to deny, revoke, or suspend a license on the basis of a criminal conviction or professional misconduct, requires boards to amend their existing regulations for use when considering the denial, suspension, or revocation of a license to determine whether a crime is substantially related to the qualifications, functions, or duties of the profession regulated, and to develop criteria to evaluate the rehabilitation of a person when considering the denial, suspension, or revocation of a license. AB 2138 also allows certain boards, including the CBA, to deny

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<sup>1</sup> All CCR references are to Division 1 of Title 16 of the California Code of Regulations, unless otherwise specified.

a license if “the applicant was convicted of a financial crime currently classified as a felony that is directly and adversely related to the fiduciary qualifications, functions, or duties of the profession” being regulated. This proposed rulemaking is intended to address the requirements of AB 2138 and impacts the following regulations: CCR section 99 – Substantial Relationship Criteria, and CCR section 99.1 – Rehabilitation Criteria for Denials, Suspensions, Revocations, Restorations, Reduction of Penalty, Etc., and proposes new CCR section 99.2 – Directly and Adversely Financial Crime Criteria.

The CBA is also proposing amendments to its “Disciplinary Guidelines and Model Orders” (Disciplinary Guidelines) as part of this rulemaking, which impacts CCR section 98. The CBA last reviewed and updated its Disciplinary Guidelines in 2013. Since that time, there have been changes in laws, regulations, and policy direction by the CBA. Due to the critical nature of the document and that it is often referenced by the CBA, licensees, attorneys and Administrative Law Judges (ALJs) during the imposition of discipline, revisions are necessary to address these changes, and to ensure the CBA imposes discipline against licensees in a consistent manner.

The CBA’s proposed modifications to the Disciplinary Guidelines include the proposed amendments to the CBA’s rehabilitation criteria to comply with AB 2138. The CBA would also like to identify rehabilitation evidence to assist applicants and licensees in preparing their cases related to their rehabilitation. As a result, changes to the Disciplinary Guidelines are necessary to ensure sufficient guidance is provided to the CBA and ALJs when considering rehabilitation criteria.

**Anticipated benefits from this regulatory action:**

This regulatory action is anticipated to improve clarity, transparency, and uniformity in the CBA’s licensing and enforcement processes and will result in the CBA’s compliance with the provisions of AB 2138.

Updating the Disciplinary Guidelines will ensure that the CBA, ALJs, and other individuals involved in the disciplinary process are provided current and consistent guidance and a clear reference in determining appropriate discipline of licensees and those practicing accountancy in the State without a valid permit issued by the CBA. As consumer protection is the CBA’s highest priority, it is essential that information used during the disciplinary process is current, valid, and consistent.

Modifying the rehabilitation criteria and identifying rehabilitation evidence will enable the CBA to consider a wider range of information to help ensure that a licensee providing public accounting services to consumers is sufficiently rehabilitated to provide these services in a manner consistent with the public health, safety and welfare, and guiding individuals in how to demonstrate their rehabilitative efforts.

## **Specific Purpose/Factual Basis/Rationale**

The CBA proposes the following:

- 1) Amend CCR section 98 to update the version of the Disciplinary Guidelines;
- 2) Amend CBA's substantial relationship criteria in CCR section 99 to implement, interpret or make specific the provisions of AB 2138;
- 3) Amend CBA's rehabilitation criteria in CCR section 99.1 to implement, interpret or make specific the provisions of AB 2138 and identify additional rehabilitation criteria; and
- 4) Adopt new CCR section 99.2 to implement, interpret or make specific the provisions of AB 2138 by establishing criteria for a financial crime currently classified as a felony that is directly and adversely related to the fiduciary qualifications, functions, or duties of public accountancy.

The specific purpose, factual basis and rationale for the proposed amendments are as follows:

### **1. Amend Section 98 of Title 16 of the California Code of Regulations.**

The proposed amendment of CCR section 98 would incorporate by reference the "Disciplinary Guidelines and Model Orders 10<sup>th</sup> Edition, 2019." The CBA proposes to amend the Disciplinary Guidelines as follows:

#### **Title Page**

The proposed amendments reflect the new edition (10<sup>th</sup> edition) and updated year (2013 to 2019), which coincides with the CBA's review. The title page also includes an amendment to reflect the CBA's current address.

These changes are necessary to ensure the title page reflects the revised edition number and year of the Disciplinary Guidelines, as well as provide the CBA's current address.

#### **Table of Contents**

The proposed amendment adds a table of contents to the Disciplinary Guidelines.

The updated table of contents is necessary to assist individuals in quickly locating the information they are seeking. The table of contents is broken down into Sections, which correspond with the sections contained throughout the document.

#### **Section I – Introduction (p. 1)**

The proposed amendments reflect the use of acronyms and other non-substantive changes.

The basis for the changes is to improve overall clarity and consistency throughout the Disciplinary Guidelines.

#### Section II – General Considerations (pp. 3-4)

The proposed amendments to the General Considerations section are as follows:

- d. – Including a reference to “Section V. Rehabilitation Criteria.”
- e. – Removing a reference to a checklist that was designed to assist the CBA and ALJs with the preparation of a petition for reinstatement. The checklist is no longer used; accordingly, it is necessary to remove the reference to the checklist to conform to the CBA’s and ALJ’s actual practice.
- g. – Adding language to clarify that when suspension is imposed, a Respondent may not engage in activities for which certification is required during the period of suspension. This is a nonsubstantive change and merely reiterates that suspended licensees may not practice while suspended. The proposed amendment clarifies that the Respondent will be required to notify clients regarding the suspended status of the certificate if directed to do so by the CBA. This is also a nonsubstantive change. The change ensures consistency with the suspension model order and provides clearer direction to Respondent.
- Removing the note in reference to BPC section 143.5 prohibiting the CBA from requiring restitution in disciplinary cases related to a civil actions settled for monetary damages that have been satisfied for full and final satisfaction of the parties in the civil action. The basis for this change is based on the CBA’s minimal use of the Restitution condition of probation. The note is also merely a restatement of statute and unnecessary for the CBA Guidelines. Section IV. Evidence in Mitigation of Penalty also includes language considering restitution made in full for ALJs to consider as a mitigating circumstance.

There are also non-substantive changes being proposed to correct grammar, capitalization, and acronyms.

The basis for the changes is to improve overall clarity and consistency throughout the Disciplinary Guidelines.

#### Section V – Rehabilitation Criteria (pp. 9-10)

The proposed amendments to this section of the Disciplinary Guidelines provide guidance on rehabilitation criteria when considering the denial or restoration of a certificate or a reduction of penalty, and reflect the proposed changes to CCR section 99.1 being made to comply with AB 2138. Specifically, the rehabilitation criteria in the current Disciplinary Guidelines (9<sup>th</sup> Edition, 2013) applies only to the evaluation of an applicant’s rehabilitation in the context of license denial. The proposed amendments to Section V are consistent with the proposed changes to Section 99.1, and provide that the rehabilitation criteria apply to the evaluation of an applicant or a licensee or a reduction of penalty. In addition, the proposed amendments note that the burden of

proof regarding rehabilitation is the responsibility of the individual seeking licensure, relicensure, or a reduction of penalty, which is consistent with applicable case law.<sup>2</sup> The amendment is necessary to assist individuals in understanding the CBA's expectations regarding the demonstration of rehabilitation to comply with AB 2138, and to explain the criteria the Board considers in evaluating rehabilitation.

Section V is also being amended to reflect the proposed additional rehabilitation criteria in Section 99.1, which are:

- The nature and gravity of the act(s) or offense(s).

The CBA proposes to add the consideration of the “gravity” of the act(s) or offense(s) to its rehabilitation criteria. The gravity, or seriousness, of the conduct is relevant in determining whether the individual has shown rehabilitation as compared to the gravity of the act(s) or offense(s) committed. Together, the nature and gravity of the act(s) or offense(s) are relevant in evaluating whether and to what extent the conduct is related to the practice of public accountancy and is valuable in assessing whether the facts support a determination of rehabilitation.

- Nature and extent of actual and potential consumer harm.

It is necessary for the CBA to consider the nature and extent of actual and potential consumer harm as these factors reflect whether and to what extent the conduct is related to the practice of public accountancy and the extent to which the individual failed to comport themselves in a manner consistent with the public health, safety and welfare as it relates to the practice of public accountancy. Further, this information bears on whether the individual is sufficiently rehabilitated in conjunction with the CBA's other rehabilitative criteria.

- Attitude toward the individual's commission of the violations.

It is necessary for the CBA to consider the individual's attitude toward their commission of the violations as it is relevant in evaluating whether the individual is rehabilitated and their willingness to comply with the law and rules of licensure in the future. This information is relevant in the CBA's assessment of the individual's willingness to practice public accountancy in a manner consistent with the public health, safety and welfare.

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<sup>2</sup> *Flanzer v. Board of Dental examiners* (1990) 220 Cal.App.3d 1392, 1398.

- Recognition of wrongdoing.

It is necessary for the CBA to consider the individual's recognition of wrongdoing as it is relevant in evaluating their rehabilitation. This information reflects their willingness to comply with the law and rules of licensure and to practice public accountancy consistent with the public health, safety and welfare.

- History of violations.

It is necessary for the CBA to consider the individual's history of violations as it is relevant in evaluating their rehabilitation. This information reflects the individual's willingness to comply with the law and rules of licensure and is relevant in assessing whether the individual is sufficiently rehabilitated to practice public accountancy consistent with the public health, safety and welfare.

- The pursuit of corrective actions to deter future violations.

It is necessary for the CBA to consider the nature and extent to which the applicant or licensee has taken corrective actions to ensure the violation will not recur as it is relevant in evaluating the individual's rehabilitation. This information is valuable in assessing the individual's willingness to comply with the law, the rules of licensure, and whether the individual is sufficiently rehabilitated to practice public accountancy consistent with the public health, safety and welfare.

- Nature and extent of restitution to consumers harmed by violations.

It is necessary for the CBA to consider the nature and extent of restitution to consumers harmed by violations as it is relevant in evaluating the individual's rehabilitation. This information is relevant in assessing the individual's willingness to comply with the law, the rules of licensure, whether the individual is sufficiently rehabilitated to practice public accountancy consistent with the public health, safety and welfare.

- Other additional aggravating or mitigating factors.

It is necessary for the CBA to consider other aggravating or mitigating factors to allow the Board to evaluate other factors that are not otherwise addressed in the Board's criteria. This criterion allows the individual and the Office of the Attorney General to provide additional evidence relevant in determining whether the individual is sufficiently rehabilitated to practice public accountancy consistent with the public health, safety and welfare.

Section V also specifies that the CBA will consider whether an applicant convicted of a crime made a showing of rehabilitation when the applicant completed parole or probation without a violation. This evaluation is required under BPC section 480 and it is necessary to include it here to consolidate the CBA’s rehabilitation requirements in one place. Section V also specifies that an applicant is considered to have made a showing of rehabilitation if, in applying its rehabilitation criteria, the CBA finds that the applicant is rehabilitated; and that a showing of rehabilitation supports, but is not in itself, a finding that an individual is rehabilitated. This is necessary to clarify the interplay between BPC section 480(c), which indicates that a board shall not deny a license if the individual “has made a showing of rehabilitation pursuant to Section 482[,]” and BPC section 482(b)(2), which states that a board, “shall consider whether an applicant or licensee has made a showing of rehabilitation if [...] the board finds that the applicant is rehabilitated” pursuant to the board’s rehabilitation criteria. The proposed amendment to Section 99.1(b) clarifies that, for applicants, the CBA will apply its criteria for rehabilitation prior to making its final determination of whether the applicant is sufficiently rehabilitated to practice public accountancy consistent with the public health, safety and welfare.

This proposal reflects relevant case law that describes rehabilitation as “a state of mind.” (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058.) “While a candid admission of misconduct and a full acknowledgement of wrongdoing may be a necessary step in the process, it is only a first step. [...] a truer indication of rehabilitation will be presented if [the person] can demonstrate by his sustained conduct over an extended period of time that he is once again fit to practice [...]” (*In re Conflenti* (1981) 29 Cal.3d 120, 124-125.) In addition, persons “under the direct supervision of correctional authorities are required to behave in exemplary fashion [...]” (*In re Gossage* (2000) 23 Cal.4th 1080, 1099.) With these in mind, the proposed criteria are intended to allow the CBA to consider applications for licensure and suspensions or revocations of a license on a case-by-case basis weighing various mitigating and aggravating factors to gauge a person’s rehabilitation and to comply with the requirements of AB 2138.

Collectively, the criteria emphasize the CBA’s mission to ensure that individuals who practice public accountancy are sufficiently rehabilitated to provide public accounting services in a manner consistent with the public health, safety and welfare, which is critical in the CBA meeting its consumer protection mandate. The proposed additional rehabilitation criteria provide guidance to applicants and licensees regarding what the CBA considers in evaluating rehabilitation.

Modifying the rehabilitation criteria and identifying rehabilitation evidence will enable the CBA to consider a wider range of information to help ensure that a licensee providing public accounting services to consumers is sufficiently rehabilitated to provide these services in a manner consistent with the public health, safety and welfare, and guiding individuals in how to demonstrate rehabilitative efforts.

## Section VI – Rehabilitation Evidence (p. 11)

The proposed addition of the Rehabilitation Evidence section to the Disciplinary Guidelines is intended to identify criteria to assist individuals with examples of types of evidence that may be submitted to demonstrate rehabilitative efforts and competency. It is also designed to serve as a guide for the CBA in assessing rehabilitation as it evaluates an individual's rehabilitation and fitness for the practice of public accountancy in a manner consistent with public health, safety and welfare.

The CBA often receives inquiries from individuals on the types of documents the CBA receives in assessing an individual's rehabilitation. Accordingly, the CBA developed a list of examples of the types of documentation it typically receives from petitioners for consideration in petition for reinstatement and reduction of penalty hearings, which the CBA has found helpful in making a determination on a person's rehabilitation. The inclusion of the list, while not exhaustive, is reasonably necessary to provide consistent guidance to individuals asking about rehabilitation evidence. These types of examples may be submitted at the discretion of the individual and will be reviewed by the CBA and considered on a case-by-case basis.

Examples of the types of evidence provided in this section that may be submitted to demonstrate rehabilitative efforts and competency are as follows:

- a. A letter from Respondent describing underlying circumstances of the arrest and conviction record as well as any rehabilitation efforts or changes in life since that time to prevent future problems.
- b. Recent, dated written statements or performance evaluations from past and/or current employers or persons in positions of authority who have on-the-job knowledge of the Respondent's current competence in the practice of public accountancy, including the period of time and capacity in which the person worked with the Respondent.
- c. Recent, dated letters or a current mental status examination by a clinical psychologist or psychiatrist regarding the Respondent's participation in a rehabilitation, therapy or recovery program, which should include a diagnosis of the condition or any impairment, current state of recovery, and the psychologist's or psychiatrist's basis for determining rehabilitation. The evaluation should also address the likelihood of similar acts occurring in the future, and should speak to the Respondent's mental capacity and ability to practice public accountancy safely.
- d. Letters of reference from other knowledgeable professionals, such as probation or parole officers regarding the Respondent's participation in and/or compliance with terms and conditions of probation or parole, which should include at least a

description of the terms and conditions of probation or parole, and the officer's basis for determining compliance.

- e. Recent, dated letters from outside individuals describing Respondent's community or volunteer participation in civic activities or support groups (e.g., Alcoholics Anonymous, Narcotics Anonymous, other professional or community based-support groups).
- f. Documentary or other evidence showing continuing education related to the practice of public accountancy.
- g. Documentary or other evidence showing enrollment in or completion of an advanced degree program. In instances where an individual is petitioning for the reinstatement of a revoked certificate or reduction of penalty, the enrollment in or completion of an advanced degree program should have occurred after the effective date of the disciplinary order.

Section VII – Administrative Penalties (pp. 13-14)

The proposed amendments to the Administrative Penalties section of the Disciplinary Guidelines renumbers the section title and contains other non-substantive amendments to correct grammar, capitalization, and acronym usage.

The basis for the changes is to improve overall clarity and consistency throughout the Disciplinary Guidelines.

Section VIII – Disciplinary Guidelines (pp.15-64)

The proposed amendments to the introductory paragraph of the Disciplinary Guidelines section renumbers the section title and contains other non-substantive amendments to correct grammar, capitalization, and acronym usage. The basis for the changes is to provide consistency throughout the Disciplinary Guidelines.

The Disciplinary Guidelines are organized numerically by statutory and regulatory section number. The CBA is proposing the following amendments:

**BUSINESS AND PROFESSIONS CODE (SEE PP. 15-41)**

Article 2 Sections

The non-substantive proposed amendments are:

- Repositioning the model order number references in brackets.
- Updating the model number reference(s) for each condition of probation. This is necessary due to a renumbering of the standard and optional terms of probation (*pages 67-78 of the Disciplinary Guidelines*).

- Adding a reference to “BPC” to the code section that relates to Administrative Penalties.
- In the Reference portion:
  - Including the acronym “CCR.”
  - Changing “Section” to “section.”

The bases for the changes are to improve overall clarity and consistency throughout the Disciplinary Guidelines, clarify the specific code section references (BPC and CCR), and address minor grammatical/spelling issues.

The remaining proposed amendments to Article 2 are substantive and are:

- The proposal will remove the following conditions of probation from “if warranted” (these conditions are proposed to be included as “required” conditions; see proposed amendments to Standard Conditions of Probation):
  - Ethics Continuing Education
  - Regulatory Review Course

The change is necessary because all disciplined licensees will benefit from additional training on ethical decision-making and the laws governing the practice of public accountancy; accordingly, it is necessary that the Disciplinary Guidelines’ Conditions of Probation reflect that these conditions would no longer be used “if warranted.”

### *Article 3 Sections*

The primary amendment adds a maximum term of three years’ probation for violation of BPC sections 5058 and 5058.1. The basis for establishing a maximum term of three years’ probation for these violations is to be consistent with discipline imposed for similar violations. Three years is an appropriate timeframe to monitor a licensee on probation to ensure the violations do not continue and the individual completes the necessary probation terms. If the licensee fails to comply with the prescribed probationary terms during the three years, the CBA will have a sufficient amount of time to take further action in most cases.

The proposal would also remove the following, if warranted, the section on optional conditions of probation from sections 5050(a), 5055, 5056, 5058 and 5058.1, and add them to the section on standard conditions of probation:

- Ethics Continuing Education
- Regulatory Review Course

The change is necessary because all disciplined licensees will benefit from additional training on ethical decision-making and the laws governing the practice of public accountancy; accordingly, it is necessary that the Disciplinary Guidelines’ Conditions of Probation reflect that these conditions would no longer be used “if warranted” and would be added to the Standard Conditions of Probation.

Additional proposed amendments to Article 3 are non-substantive and are:

- Capitalizing the word “respondent” to “Respondent” or “respondents” to “Respondents.”
- Updating the model number reference(s) for each condition of probation. This is necessary due to a renumbering of the standard and optional terms of probation (*pages 67-78 of the Disciplinary Guidelines*).
- Adding a reference to “BPC” to the code section that relates to Administrative Penalties.
- In the Reference portion of section 5050(c), change “See” to “Reference.”
- In the Reference portion of section 5058:
  - Including the acronym “CCR.”
  - Changing “Section” to “section.”

The bases for the non-substantive changes are to improve overall clarity and consistency throughout the Disciplinary Guidelines, clarify the specific code section references (BPC and CCR), and address minor grammatical/spelling issues.

#### Article 3.5 Sections

The primary amendment adds a maximum term of three years’ probation for violation of BPC section 5060. The basis for establishing a maximum term of three years’ probation for violations is to be consistent with discipline imposed for similar violations. Three years is an appropriate timeframe to monitor a licensee on probation to ensure the violations do not continue and the individual to complete the necessary probation terms. If the licensee fails to comply with the prescribed probationary terms during the three years, the CBA will have a sufficient amount of time to take further action in most cases. The proposal would also remove the following, “if warranted,” conditions of probation:

- Ethics Continuing Education
- Regulatory Review Course

The change is necessary because all disciplined licensees will benefit from additional training on ethical decision-making and the laws governing the practice of public accountancy; accordingly, it is necessary that the Disciplinary Guidelines’ Conditions of Probation reflect that these conditions would no longer be used “if warranted.”

Additional proposed amendments to Article 3.5 are non-substantive and are:

- Updating the model number reference(s) for each condition of probation. This is necessary due to a renumbering of the standard and optional terms of probation (*pages 67-78 of the Disciplinary Guidelines*).
- Adding a reference to “BPC” to the code section that relates to Administrative Penalties.
- In the Reference portion of sections 5060, 5062, and 5063:
  - Including the acronym “BPC.”

- Changing “Section” to “section.”
- Replacing the word “Probation” with “Prohibition” in Condition of Probation #7 for section 5063.3, consistent with the proposed probationary terms referenced on page 76 of the Disciplinary Guidelines (#39 Prohibition from Handling Funds). This correction is necessary to ensure accuracy.

The bases for the non-substantive changes are to improve overall clarity and consistency throughout the Disciplinary Guidelines and address minor grammatical/spelling issues.

#### *Article 4 Sections*

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The proposal would remove the following, “if warranted,” conditions of probation:

- Ethics Continuing Education
- Regulatory Review Course

The change is necessary because all disciplined licensees will benefit from additional training on ethical decision-making and the laws governing the practice of public accountancy; accordingly, it is necessary that the Disciplinary Guidelines’ Conditions of Probation reflect that these conditions would no longer be used “if warranted.”

Additional proposed amendments to Article 4 are non-substantive and are:

- Updating the model number reference(s) for each condition of probation. This is necessary due to a renumbering of the standard and optional terms of probation (*pages 67-78 of the Disciplinary Guidelines*).
- Adding a reference to “BPC” to the code section that relates to Administrative Penalties in all sections and in section 5072(a) before the reference to section 5073.
- Modifying section 5072(a) to reference “BPC” next to code section 5073 in the introductory sentence and change “See” to “Reference” in the Reference portion.
- In the Reference portion of sections 5076(a), 5076(f), and 5079(a)(b)(d):
  - Including the acronym “CCR.”
  - Changing “Section” to “section.”
- Replacing the word “Sample” with “Samples” in Condition of Probation #7 for section 5076(a), consistent with the probationary term referenced on page 76 of the Disciplinary Guidelines (#38 Samples – Audit, Review or Compilation). This correction is necessary to ensure accuracy.

The bases for the changes are to improve overall clarity and consistency throughout the Disciplinary Guidelines, clarify the specific code section references (BPC and CCR), and address minor grammatical/spelling issues.

## Article 5 Sections

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The proposal would remove the following, “if warranted,” conditions of probation from the guidelines for section 5095(a):

- Ethics Continuing Education
- Regulatory Review Course

The change is necessary because all disciplined licensees will benefit from additional training on ethical decision-making and the laws governing the practice of public accountancy; accordingly, it is necessary that the Disciplinary Guidelines’ Conditions of Probation reflect that these conditions would no longer be used “if warranted.”

Additional proposed amendments to Article 5 are non-substantive and are:

- Adding a reference to “BPC” next to the code section that relates to Administrative Penalties.
- In section 5081(a):
  - Including a reference to “BPC” and changing “Section” to “section” in the Minimum Penalty section.
  - Changing the word “See” to “Reference” in the Reference portion.
- In section 5088, changing “Board” to “CBA” in the “Minimum/Maximum Penalty” section.

The bases for the changes are to improve overall clarity and consistency throughout the Disciplinary Guidelines, clarify the specific code section references (BPC) and address minor grammatical/spelling issues.

## Article 5.1: Practice Privilege Sections

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The proposal would remove the following, “if warranted,” conditions of probation:

- Ethics Continuing Education
- Regulatory Review Course

The change is necessary because all disciplined licensees will benefit from additional training on ethical decision-making and the laws governing the practice of public accountancy; accordingly, it is necessary that the Disciplinary Guidelines’ Conditions of Probation reflect that these conditions would no longer be used “if warranted.”

Additional proposed amendments are non-substantive and are:

- Repositioning the model order number references in brackets.
- Updating the model order number reference(s) for each condition of probation. This is necessary due to a renumbering of the standard and optional terms of probation (*pages 67-78 of the Disciplinary Guidelines*).

- Adding a reference to “BPC” next to the code section that relates to Administrative Penalties.
- Including a reference to “BPC” next to the section number in “Suspension” for sections 5096(e)(2), (3), (5), (6), (7), (8), (9), 5096(f), 5096(i) and 5096.5

The bases for the changes are to improve overall clarity and consistency throughout the Disciplinary Guidelines, clarify the specific code section references (BPC) and address minor grammatical/spelling issues.

### *Article 5.5 Sections*

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The proposed amendment would remove the following, “if warranted,” conditions of probation:

- Ethics Continuing Education
- Regulatory Review Course

The change is necessary because all disciplined licensees will benefit from additional training on ethical decision-making and the laws governing the practice of public accountancy; accordingly, it is necessary that the Disciplinary Guidelines’ Conditions of Probation reflect that these conditions would no longer be used “if warranted.”

Additional proposed amendments are non-substantive and are:

- Updating the model order number reference(s) for each condition of probation. This is necessary due to a renumbering of the standard and optional terms of probation (*pages 67-78 of the Disciplinary Guidelines*).
- Replacing the word “Audits” with “Audit” in Condition of Probation #9, consistent with the probationary term referenced on page 76 of the Disciplinary Guidelines (#38 Samples – Audit, Review or Compilation). This correction is necessary to ensure accuracy.
- Adding a reference to “BPC” next to the code section that relates to Administrative Penalties.
- In the Reference portion:
  - Including the acronym “CCR.”
  - Changing “Section” to “section.”

The bases for the changes are to improve overall clarity and consistency throughout the Disciplinary Guidelines, clarify the specific code section references (CCR and BPC) and address minor grammatical/spelling issues.

### *Article 6 Sections*

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The primary proposed amendments to Article 6 are related to section 5100(a). The amendment proposes to exclude misdemeanor alcohol/drug convictions under Vehicle Code section 23152 and misdemeanor drug convictions for possession for personal use

from being subject to the same penalties as felony convictions or multiple misdemeanor convictions. The minimum and maximum penalties for felony convictions or multiple misdemeanor convictions remain unchanged (minimum penalty: revocation stayed, with 120-day suspension and three years of probation; maximum penalty: revocation).

A new minimum and maximum penalty guideline is proposed for multiple misdemeanor alcohol/drug convictions under Vehicle Code section 23152 and drug convictions for possession for personal use. The proposed minimum penalty is 120-day suspension stayed and one year of probation, and a maximum penalty of revocation.

The proposed changes provide separate guidelines for felony or multiple misdemeanor convictions on one hand, and misdemeanors violations associated with drugs and alcohol, on the other hand. Currently, the Disciplinary Guidelines (9<sup>th</sup> Edition, 2013) recommends a minimum and maximum penalty for any conviction of a crime substantially related to the qualifications, functions and duties of a CPA. The proposed amendments reduce the minimum penalty for multiple misdemeanor alcohol/drug convictions as these convictions are considered not as severe and generally accompanied by reduced criminal penalties, including shorter lengths of sentencing, informal probations and opportunity to be rehabilitated. Therefore, the minimum penalty for these convictions is proposed to be divided from the minimum penalties of a felony conviction or multiple misdemeanor convictions not related to alcohol/drugs. The Board selected the minimum penalty as a 120-day suspension because this is the lowest penalty the Board would reasonably impose for misdemeanor drug and alcohol offenses. It provides meaningful discipline for even low-level offenders.

The proposed amendments in Article 6 also eliminate the Enrolled Agents (EA) Examination as a possible condition of probation in sections 5100(a), (d), (h), (i), (j), (k) and (l). The EA examination is being deleted from the Disciplinary Guidelines as an optional term of probation (see page 75, #35). The reason for the elimination is that it is no longer necessary. The CBA has not used this optional term of probation in over five years. Further, in the event an individual needed to demonstrate competency in tax services, the CBA could require completion of the Uniform CPA Examination (see page 75, #35) which has a section that includes tax concepts.

The proposed amendment would also remove the following “if warranted” conditions of probation:

- Ethics Continuing Education
- Regulatory Review Course

The change is necessary because all disciplined licensees will benefit from additional training on ethical decision-making and the laws governing the practice of public accountancy; accordingly, it is necessary that the Disciplinary Guidelines’ Conditions of Probation reflect that these conditions would no longer be used “if warranted.”

Additional amendments to Article 6 are non-substantive and are:

- Repositioning the model order number references in brackets.
- Adding the words “BPC sections” prior to the code section referenced in section 5100 for Condition of Probation #3 (optional conditions).
- Including a reference to “BPC” next to the code section number for the “Administrative Penalty” condition of probation.
- Updating the model order number reference(s) for each condition of probation. This is necessary due to a renumbering of the standard and optional terms of probation (*pages 67-78 of the Disciplinary Guidelines*).
- Deleting the word “of” under conditions of probation in relation to the duration of probation in BPC sections 5100, 5100(a), (b), (c), (d) and (i).
- In section 5100(e), replacing “Material” with “Materials” in Condition of Probation #5 and “Audits” with “Audit” in Condition of Probation #8, consistent with the probationary terms referenced on page 73 (#33 Library Reference Materials) and page 76 (#38 Samples – Audit, Review or Compilation).
- Adding the acronym “BPC” prior to the code section reference in the introductory language for section 5100(f) and changing “Section” to “section.”

The bases for the non-substantive changes are to improve overall clarity and consistency throughout the Disciplinary Guidelines, clarify the specific code section references (BPC) and address minor grammatical/spelling issues.

#### *Article 7 Sections*

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The proposed amendments are non-substantive and are:

- Change the word “See” to “Reference.”
- Adding the words “BPC” prior to the code section reference.
- Changing “Section” to “section.”
- Removing the bolding on the font for “Unlicensed Activities.”

The bases for the changes are to improve overall clarity and consistency throughout the Disciplinary Guidelines, clarify the specific code section references (BPC) and address minor grammatical/spelling issues.

#### *Article 9 Sections*

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The proposed amendment would remove the following “if warranted” conditions of probation in BPC sections 5154, 5155 and 5158:

- Ethics Continuing Education
- Regulatory Review Course

The change is necessary because all disciplined licensees will benefit from additional training on ethical decision-making and the laws governing the practice of public

accountancy; accordingly, it is necessary that the Disciplinary Guidelines' Conditions of Probation reflect that these conditions would no longer be used "if warranted."

The additional proposed amendments are non-substantive and are:

- Changing the word "See" to "Reference" and adding the acronym "BPC" prior to the code section reference in section 5152.1.
- Updating the model order number reference(s) for each condition of probation. This is necessary due to a renumbering of the standard and optional terms of probation (*pages 67-78 of the Disciplinary Guidelines*).
- Including a reference to "BPC" next to the code section that relates to Administrative Penalties.
- Section 5156 – changing "respondents" to "Respondents" in the Note.

The bases for the changes are to improve overall clarity and consistency throughout the Disciplinary Guidelines, clarify the specific code section references (BPC) and address minor grammatical/spelling issues.

## CALIFORNIA CODE OF REGULATIONS (PP. 43 - 64)

### *Article 1: General*

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The proposal would remove the following "if warranted" conditions of probation:

- Ethics Continuing Education
- Regulatory Review Course

The change is necessary because all disciplined licensees will benefit from additional training on ethical decision-making and the laws governing the practice of public accountancy; accordingly, it is necessary that the Disciplinary Guidelines' Conditions of Probation reflect that these conditions would no longer be used "if warranted."

The additional proposed amendments are non-substantive and are:

- Repositioning the model order number references in brackets. Updating the model order number reference(s) for each condition of probation. This is necessary due to a renumbering of the standard and optional terms of probation (*pages 67-78 of the Disciplinary Guidelines*).
- Including a reference to "BPC" next to the code section that relates to Administrative Penalties.

The basis for the changes is to improve overall clarity and consistency throughout the Disciplinary Guidelines.

### *Article 2: Examinations*

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The proposed amendment is non-substantive and is:

- Including a reference to “BPC” next to code section numbers 5100 and 5116 referenced in the minimum and maximum penalty section.

The basis for the changes is to improve overall clarity and consistency throughout the Disciplinary Guidelines.

### *Article 3: Practice Privileges*

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The proposed amendments are non-substantive and are:

- Repositioning the model order number references in brackets.
- Including a reference to “BPC” next to the code section that relates to Administrative Penalties.

The basis for the changes is to improve overall clarity and consistency throughout the Disciplinary Guidelines.

### *Article 5: Registration*

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The proposal would remove the following “if warranted” conditions of probation:

- Ethics Continuing Education
- Regulatory Review Course

The change is necessary because all disciplined licensees will benefit from additional training on ethical decision-making and the laws governing the practice of public accountancy; accordingly, it is necessary that the Disciplinary Guidelines’ Conditions of Probation reflect that these conditions would no longer be used “if warranted.”

The additional proposed amendments are non-substantive and are:

- Repositioning the model order number references in brackets.
- Updating the model order number reference(s) for each condition of probation. This is necessary due to a renumbering of the standard and optional terms of probation (*pages 67-78 of the Disciplinary Guidelines*).
- Including a reference to “BPC” next to the code section that relates to Administrative Penalties and changing “Section” to “section.”

The bases for the changes are to improve overall clarity and consistency throughout the Disciplinary Guidelines and address minor grammatical/spelling issues.

## *Article 6: Peer Review*

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The proposal would remove the following “if warranted” conditions of probation:

- Ethics Continuing Education
- Regulatory Review Course

The change is necessary because all disciplined licensees will benefit from additional training on ethical decision-making and the laws governing the practice of public accountancy; accordingly, it is necessary that the Disciplinary Guidelines’ Conditions of Probation reflect that these conditions would no longer be used “if warranted.”

The additional proposed amendments are non-substantive and are:

- Repositioning the model order number references in brackets.
- Updating the model order number reference(s) for each condition of probation. This is necessary due to a renumbering of the standard and optional terms of probation (*pages 67-78 of the Disciplinary Guidelines*).
- Including a reference to “BPC” next to the code section that relates to Administrative Penalties.
- In the Reference sections of CCR sections 40(a)(b)(c), 41, 45 and 46(a), including a reference to “BPC” next to the section number reference and changing “Section” to “section.”
- Replacing the word “Sample” with “Samples” in Condition of Probation #9 in CCR section 44, consistent with the probationary term referenced on page 76 of the Disciplinary Guidelines (#38 Samples – Audit, Review or Compilation). The correction of this section is to ensure accuracy.

The bases for the changes are to improve overall clarity and consistency throughout the Disciplinary Guidelines, clarify the specific code section references (BPC), and address minor grammatical/spelling issues.

## *Article 9: Rules of Professional Conduct*

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The proposal would remove the following “if warranted” conditions of probation:

- Ethics Continuing Education
- Regulatory Review Course

The change is necessary because all disciplined licensees will benefit from additional training on ethical decision-making and the laws governing the practice of public accountancy; accordingly, it is necessary that the Disciplinary Guidelines’ Conditions of Probation reflect that these conditions would no longer be used “if warranted.”

The additional proposed amendments are non-substantive and are:

- Repositioning the model order number references in brackets.

- Updating the model order number reference(s) for each condition of probation. This is necessary due to a renumbering of the standard and optional terms of probation (*pages 67-78 of the Disciplinary Guidelines*).
- Including a reference to “BPC” next to the code section that relates to Administrative Penalties.
- In the Reference sections of CCR sections 51.1, 54.1, 59, 60, 61, 68, 68.2, 68.3, and 68.5, including a reference to “BPC” next to the section number reference and changing “Section” to “section.”
- Replacing “Audits” with “Audit” in Condition of Probation #5 in CCR sections 68.2, 68.4 and 68.5, consistent with the probationary terms referenced on page 76 (#38 Samples – Audit, Review or Compilation).
- Replacing “Material” with “Materials” in CCR sections 68.3, 68.4 and 68.5, Condition of Probation #5 consistent with the probationary terms referenced on page 73 (#33 Library Reference Materials).

The bases for the changes are to improve overall clarity and consistency throughout the Disciplinary Guidelines, clarify the specific code section references (BPC), ensure accuracy and address minor grammatical/spelling issues.

#### *Article 11: Accountancy Corporation Rules*

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The proposal would remove the following “if warranted” conditions of probation:

- Ethics Continuing Education
- Regulatory Review Course

The change is necessary because all disciplined licensees will benefit from additional training on ethical decision-making and the laws governing the practice of public accountancy; accordingly, it is necessary that the Disciplinary Guidelines’ Conditions of Probation reflect that these conditions would no longer be used “if warranted.”

The additional proposed amendments are non-substantive and are:

- Updating the model order number reference(s) for each condition of probation. This is necessary due to a renumbering of the standard and optional terms of probation (*pages 67-78 of the Disciplinary Guidelines*).
- Including a reference to “BPC” next to the code section that relates to Administrative Penalties.

The bases for the changes are to improve overall clarity and consistency throughout the Disciplinary Guidelines and clarify the specific code section references (BPC).

#### *Article 12: Continuing Education Rules*

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The proposal would remove the following “if warranted” conditions of probation:

- Ethics Continuing Education

- Regulatory Review Course

The change is necessary because all disciplined licensees will benefit from additional training on ethical decision-making and the laws governing the practice of public accountancy; accordingly, it is necessary that the Disciplinary Guidelines' Conditions of Probation reflect that these conditions would no longer be used "if warranted."

The additional proposed amendments are non-substantive and are:

- Repositioning the model order number references in brackets.
- Updating the model order number reference(s) for each condition of probation. This is necessary due to a renumbering of the standard and optional terms of probation (*pages 67-78 of the Disciplinary Guidelines*).
- Including a reference to "BPC" next to the code section that relates to Administrative Penalties.

The bases for the changes are to improve overall clarity and consistency throughout the Disciplinary Guidelines and clarify the specific code section references (BPC).

#### *Article 12.5: Citations and Fines*

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The proposed amendments are non-substantive and are:

- Updating the model order number reference(s) for each condition of probation. This is necessary due to a renumbering of the standard and optional terms of probation (*pages 67-78 of the Disciplinary Guidelines*).
- Including a reference to "BPC" next to the code section that relates to Administrative Penalties.

The bases for the changes are to improve overall clarity and consistency throughout the Disciplinary Guidelines and clarify the specific code section references (BPC).

#### *Violation of Probation, Unlicensed Activities, Injunctions (pp. 65-66)*

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The proposed amendments are non-substantive and are:

- Replacing "California Code of Regulations" with the acronym "CCR."
- Replacing "\$5000" with "\$5,000."
- Adding the acronym "BPC" to clarify the code section references.
- Amending "Section" to "section."
- Correcting language under the Injunctions section to mirror language in BPC section 5122.

The bases for the changes are to improve overall clarity and consistency throughout the Disciplinary Guidelines and clarify the specific code section references.

## Section IX – Model Orders (pp. 67-78)

The proposed amendments to the Model Orders section renumbers the section title and contains the following non-substantive amendments:

- Capitalizing the word “Respondent.”
- Amending “Section” to “section.”
- Repositioning of the model order number references.

The bases for the changes are to fix grammatical/spelling errors and improve overall clarity and consistency throughout the Disciplinary Guidelines and address minor grammatical references. The changes also ensure that the numbering is sequential as a result of adding the model order, Restricted Practice (#5) and modifying standard and optional conditions of probation.

The following sections of the model orders contain substantial proposed amendments:

### Order of Restricted Practice

The proposed amendments include the addition of the section “Order of Restricted Practice.” This section will include a model order for “Permanent Restricted Practice Order,” authorized by BPC section 5100.5. This model order would be included in the decision following the prescribed probationary terms in cases where the respondent licensee will be permanently prohibited from engaging in certain services in the State for the remainder of time he/she has a California CPA license, or until the respondent successfully petitions the CBA for reinstatement of this prohibition. The type of services restricted will be based on the type of services that were performed by the licensee that were not in compliance with established professional standards and/or where the respondent’s practice reflected negligence. As this restriction is “permanent” it is not included within the probationary terms, but rather after the probationary terms at the end of the decision. The permanent practice restriction can only be removed following successfully petitioning the CBA for the reinstatement of the privilege to engage in the specific services.

The basis for this change is to both protect consumers by prohibiting a licensee from practicing in an area in which he/she is not competent, and to enable a licensee to continue practicing in areas where he/she does not have competency issues. When a licensee is disciplined and placed on probation, it provides an opportunity for the licensee to rehabilitate and at the same time provides the CBA the opportunity to monitor the practice activities to ensure consumer protection. If there are violations of unprofessional conduct or repeated violations in a practice area, a permanent restriction in that practice area gives added assurance that the licensee will not continue re-engaging in those services following the completion of their probation. Rather, the licensee will have to demonstrate competency to the CBA through the petition process.

### Petitions for Reinstatement

The proposed amendments to the Petitions for Reinstatement section include clarification that a license will be granted only if the individual has satisfied all statutory and regulatory requirements necessary to obtain a CPA license. The model order sections that include this clarification are:

- Grant petition without restrictions on the license (#6)
- Grant petition and place license on probation (#7)
- Grant petition and place license on probation after petitioner completes conditions precedent to reinstatement of the license (#8)

The purpose of this clarification is to ensure an individual petitioning for reinstatement of their license is aware that they must meet any statutory and regulatory requirements prior to reinstatement of their license.

The text used when granting the petition and placing the license on probation after the petitioner completes conditions precedent of their license (#8) includes a proposed amendment to exclude the Enrolled Agents exam as a possible example of a condition that would need to be met prior to granting a probationary license. The purpose for this amendment is that the Enrolled Agents exam condition of probation is included as a proposed amendment to be removed as a condition of probation in this rulemaking package.

The text used when denying the petition (#9) includes a proposed amendment to establish the acronym “BPC,” following the first reference of the Business and Professions Code, subsequently replacing the second reference of Business and Professions Code with the acronym “BPC.” The basis for this amendment is to correct a non-substantive grammar issue to ensure clarity and consistency.

### Petition for Revocation of Probation

The continuance of probation order (#11) includes a proposed amendment to add “a period of.” The basis for the amendment is for clarification purposes.

### Applicants

The order granting an application and placing a license on probation after applicant completed conditions precedent to reinstatement of the license (#14) includes a proposed amendment deleting reference to the “Enrolled Agents Exam” as a possible example of a condition that would need to be met prior to granting a probationary license.

The basis for the amendment is to eliminate the reference to the “Enrolled Agents Exam” as the CBA is proposing to eliminate this as an optional term of probation. (See #35).

## Standard Conditions of Probation

The primary amendments to this section are the following:

- Amending the Completion of Probation (#25) condition to clarify that upon completion of probation, the licensee's license will be fully restored, unless there is an order that Respondent be permanently restricted from engaging in specified services – as identified under the new model order, Permanent Restricted Practice Order (#5).

The basis for this change is to ensure internal consistency in the regulation, as discussed above. The purpose of permanent practice restrictions is to ensure consumer protection by prohibiting an individual from engaging in certain services that they have not maintained a minimum competency level and to allow them to practice in areas where consumers are not at risk.

- Adding “Ethics Continuing Education” (#26) as a standard condition of probation.

The basis for converting the Ethics Continuing Education from an optional condition of probation to a standard condition is that the CBA has used this term in a majority of its disciplinary orders over the past five years. This course will remind disciplined licensees of business ethics and how nationally recognized codes of professional conduct relate to the licensee's professional responsibilities to improve consumer protection. All disciplined licensees will benefit from additional training on ethical decision-making; accordingly, it is necessary to change this condition from an optional condition to a standard condition.

There are no substantive changes to the text as it presently appears in the optional condition of probation. It is now being proposed to make it a standard condition of probation.

- Adding “Regulatory Review Course” (#27) as a standard condition of probation.

The basis for converting the Regulatory Review Course from an optional condition of probation to a standard condition is that the CBA has used this term in a majority of its disciplinary orders over the past five years. The course provides information on the provisions of the Accountancy Act and CBA Regulations. This condition will require all disciplined licensees to better understand the current rules and regulations, to improve consumer protection. All disciplined licensees will benefit from additional training on the laws governing the practice of public accountancy; accordingly, it is necessary to change this condition from an optional condition to a standard condition to ensure they all receive the training. The CBA proposes to remove the requirement that the training be a minimum of two hours because CCR section 87.8 establishes the

Regulatory Review course as a minimum of two hours, and the CBA maintains a list of CBA-approved courses to select from.

There are no substantive changes to the text as it presently appears in the optional condition of probation. It is now being proposed to make it a standard condition of probation.

Other minor and non-substantive amendments to the Standard Conditions of Probation are:

- Cost Reimbursement (#17)
  - Replacing the word “Board” with “CBA.”
- Submit Written Reports (#18)
  - Spelling out “California Board of Accountancy” and establishing “CBA.”
  - Replacing the word “Board” with “CBA.”
- Personal Appearances (#19)
  - Spelling out “California Board of Accountancy.”
- Comply with Probation (#20)
  - Spelling out “California Board of Accountancy” and establishing “CBA.”
  - Replacing the “California Board of Accountancy” with “CBA.”
- Practice Investigation (#21)
  - Spelling out “California Board of Accountancy” and establishing “CBA” as an acronym.
- Tolling of Probation for Out-of-State Residence/Practice (#23)
  - Spelling out “California Board of Accountancy” and establishing “CBA” as an acronym.
  - Replacing “Board” with “CBA.”
- Violation of Probation (#24)
  - Spelling out “California Board of Accountancy” and establishing “CBA” as an acronym.

The basis for these amendments is to provide clarity and consistency throughout the Disciplinary Guidelines.

#### Optional Conditions of Probation

The primary proposed amendments to this section are:

- Restricted Practice (#31)
  - Adding the word “other” before attestation engagements.
  - Adding language to clarify that an individual with this term of probation would be prohibited from engaging in specified restricted services until such time as they receive authorization from the CBA to do so.

The bases for these changes is to clarify that the restricted practice for attestation engagements is not limited to audits, reviews, and compilations and to ensure the licensee is clearly notified that, pursuant to BPC sections 5100.5 and 5115, the restricted practice restrictions continue throughout probation, until they receive authorization from the CBA to resume performing the restricted services. The process to obtain approval requires the licensee to petition the CBA to remove the restriction and obtain an order providing authorization to resume performing those services.

- Ethics Continuing Education (formerly #31) and Regulatory Review Course (formerly #32).
  - Removing these sections as Optional Conditions of Probation. These conditions are proposed to be added as Standard Conditions of Probation.
- Peer Review (#34)
  - Including references to the statutory and regulatory requirements regarding peer review.
  - Specifying the timeframe in which the peer review documentation is to be submitted to the CBA.
  - Identifying what peer review documentation is to be submitted to the CBA, which is consistent with the required documents licensees submit pursuant to Title 16, CCR, section 46.
  - Adding reference for condition #38 (Samples – Audit, Review or Compilation) to be used any time #34 is used.

The bases for the changes are to provide added clarity regarding the Peer Review requirement of probation. The content of the peer review was deleted because this is governed by regulation and unnecessary. Further, a timeframe is being added for the submission of documents for a licensee undergoing the peer review process. The CBA determined that the 45-day timeframe to submit documents is appropriate because it is consistent with the language in CBA Regulation section 46, Document Submission Requirements, requiring a firm who received a substandard peer review rating to submit peer review documents to the CBA within 45 days.

These changes are necessary to ensure the respondent is in compliance with the peer review probationary term. Identifying the necessary documentation

provides clarity to the respondent regarding specifically what must be submitted to ensure they are in compliance with this term of probation.

- CPA Exam (#35)
  - Specifying the time period for the respondent to complete a section of (or all sections) of the Uniform CPA Exam.
  - Renaming “CPA exam” to “Uniform CPA Exam.”
  - Replacing “Board” with “California Board of Accountancy.”
  - Updating “exam” to “examination.”

The basis for these changes is to provide greater flexibility for the CBA when prescribing the CPA Exam as a term of probation. The CBA will evaluate each matter on a case-by-case basis and establish an appropriate time for the licensee to take the examination. The CBA removed the limitation on the number of attempts as it is unnecessary to have both a specified time period and number of attempts. The time period limitation is sufficient for this condition of probation. Additionally, grammatical changes are being made to ensure clarity and consistency throughout the Disciplinary Guidelines.

- Enrolled Agents Exam
  - Removing this section as a condition of probation.

The basis for the deletion is to eliminate this probationary condition as it has not been utilized in a disciplinary order in several years. Additionally, if a respondent needs to demonstrate competency in a tax-based area, the CBA can require completion of the CPA Exam (#35) or a specified section of the CPA Exam that contains tax-based questions.

- Continuing Education Courses (#36)
  - Adding language related to the time period in which a licensee should complete the prescribed continuing education.
  - Providing the Respondent steps to follow if they are unable to complete the prescribed continuing education courses, which includes:
    - Notify the CBA
    - Cease practice until the deficiency is rectified
    - Provide proof of compliance with continuing education
    - Await authorization from the CBA prior to practicing

The basis for the changes are to provide clarity regarding this term of probation to ensure Respondent is clearly notified of what is required in order to comply with this probationary term. The changes include a specified timeframe, at the discretion of the CBA, established for the Respondent to complete the prescribed continuing education. The CBA’s example, set at 180 days, has continuously

been used in past decisions and is considered a reasonable timeframe for Respondents to complete the continuing education.

In the instances where a Respondent does not abide by the probationary terms, steps are identified to ensure the CBA is notified and that consumers are protected by ensuring there are no practice rights during the time of the deficiency. Ensuring the Respondent is aware that failure to meet this probationary term is a violation will assist in conveying the importance of the requirement as well as ensure the Respondent is aware that the violation could result in the stay of revocation being lifted and the Respondent's licensing being revoked.

There are additional non-substantive proposed amendments to each Optional Condition of Probation and are as follows:

- Supervised Practice (#28)
  - Replacing “thirty” with “30.”
  - Spelling out “California Board of Accountancy” and establishing “CBA” as an acronym.
- Restitution (#29)
  - Spelling out “California Board of Accountancy.”
- Probation Monitoring Costs (#30)
  - Spelling out “California Board of Accountancy” and establishing “CBA” as an acronym.
- Engagement Letters (#32)
  - Spelling out “California Board of Accountancy.”
- Library Reference Materials (#33)
  - Spell out “California Board of Accountancy.”
- Active License Status (#37), Samples – Audit, Review, or Compilation (#38), Community Service – Free Services (#40), Relinquish Certificate (#41), Administrative Penalty (#43), Medical Treatment (#44), Psychotherapist (#45), Rehabilitation Program/Chemical Dependence (#46), Drugs – Screening (#48) and Biological Fluid Testing (#49)
  - Replacing “Board” with “California Board of Accountancy” and establishing the acronym “CBA.”

The bases for these changes are to ensure consistency throughout the Disciplinary Guidelines.

## **2. Amend Section 99 Substantial Relationship Criteria of Title 16 of the California Code of Regulations.**

Under existing law, BPC section 481 specifies that each DCA board shall develop criteria to aid it, when considering the denial, suspension or revocation of a license, to determine whether a crime is substantially related to the qualifications, functions, or duties of the business or profession it regulates. Beginning July 1, 2020, AB 2138 amends this section and section 493 and requires the following criteria to be used in determining whether a crime is substantially related: the nature and gravity of the offense, the number of years elapsed since the date of the offense, and the nature and duties of the profession in which the applicant seeks licensure or in which the licensee is licensed. The substantial relationship requirement stems from the due process principal that a statute constitutionally can prohibit an individual from practicing a lawful profession only for reasons related to his or her fitness or competence to practice. (*Arneson v. Fox* (1980) 28 Cal.3d 440, 448; *Moustafa v. Board of Registered Nursing* (2018) 29 Cal.App.5th 1119, 1135.) The CBA has included these criteria in its proposed amendments to CCR section 99 to comply with existing law.

CCR section 99 states crimes or acts shall be considered substantially related to the qualifications, functions, or duties of a licensee if they evidence present or potential unfitness to perform the functions authorized for the certificate or permit to practice. In addition to crimes or acts, the CBA's proposed amendments include "professional misconduct" to be considered in the substantial relationship criteria because the Board may consider such misconduct in denying licenses under AB 2138.

The CBA's proposed amendments to the substantial relationship criteria also includes language to consider "whether the crime or act of professional misconduct reflects a lack of sound professional or personal judgment relevant to the practice of public accountancy, regardless of whether financial harm occurred to a consumer." The proposed criteria are consistent with California case law. In *Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757, the court ruled that there must be a sufficient nexus between a licensee's conduct and the qualifications, functions, or duties of the profession. The court concluded that a nexus exists if there is a "lack of sound professional and personal judgment" relevant to the licensee's fitness and competence to practice. The addition of this language is to aid in transparency in identifying the types of crimes or conduct that the Board may consider to be substantially related to the practice of public accountancy.

## **3. Amend Section 99.1 Rehabilitation Criteria for Denials, Suspensions, Revocations, Restorations, Reduction of Penalty, Etc. of Title 16 of the California Code of Regulations.**

Existing law under BPC section 482 requires DCA boards to develop criteria to evaluate the rehabilitation of a person when considering the denial, suspension, or revocation of

a license. Under this section, a board is required to consider all competent evidence in the rehabilitation furnished by the applicant or licensee. Beginning July 1, 2020, AB 2138 amends BPC section 482 requiring DCA boards to develop criteria when considering whether an applicant or licensee has made a showing of rehabilitation if either of the following are met:

- The applicant or licensee has completed the criminal sentence at issue without a violation of parole or probation.
- The board, applying its criteria for rehabilitation, finds that the applicant is rehabilitated.

The proposed amendments include language related to a showing of rehabilitation, consistent with AB 2138. The CBA is also proposing to add the following criteria to consider when evaluating rehabilitation of a licensee or the eligibility for a certificate or permit:

- Nature and extent of actual and potential consumer harm.

It is necessary for the CBA to consider the nature and extent of actual and potential consumer harm as these factors reflect whether and to what extent the conduct is related to the practice of public accountancy and the extent to which the individual failed to comport themselves in a manner consistent with the public health, safety and welfare as it relates to the practice of public accountancy. Further, this information bears on whether the individual is sufficiently rehabilitated when considering the CBA's other rehabilitative criteria.

- The applicant's or licensee's attitude toward his or her commission of the violations.

It is necessary for the CBA to consider the applicant's or licensee's attitude toward his or her commission of the violations as it is relevant in evaluating whether the individual is rehabilitated and their willingness to comply with the law and rules of licensure going forward. This information is relevant in the CBA's assessment of the individual's willingness to practice public accountancy in a manner consistent with the public health, safety and welfare.

- The applicant's or licensee's recognition of wrongdoing.

It is necessary for the CBA to consider the applicant's or licensee's recognition of wrongdoing as it is relevant in evaluating the individual's rehabilitation. This information reflects their willingness to comply with the law and rules of licensure and to practice public accountancy in a manner consistent with the public health, safety and welfare.

- The applicant’s or licensee’s history of violations.

It is necessary for the CBA to consider the applicant’s or licensee’s history of violations as this is relevant in evaluating their rehabilitation. This information reflects the individual’s willingness to comply with the law and rules of licensure and is relevant in assessing whether the individual is sufficiently rehabilitated to practice public accountancy in a manner consistent with the public health, safety and welfare.

- Nature and extent to which the applicant or licensee has taken corrective action to ensure the violation will not recur.

It is necessary for the CBA to consider the nature and extent to which the applicant or licensee has taken corrective action to ensure the violation will not recur as it is relevant in evaluating the individual’s rehabilitation. This information is valuable in assessing the individual’s willingness to comply with the law, the rules of licensure, and whether they are sufficiently rehabilitated to practice public accountancy in a manner consistent with the public health, safety and welfare.

- Nature and extent of restitution to consumers harmed by violations.

It is necessary for the CBA to consider the nature and extent of restitution to consumers harmed by violations as it is relevant in evaluating the individual’s rehabilitation. This information is relevant in assessing the individual’s willingness to comply with the law, the rules of licensure, whether they are sufficiently rehabilitated to practice public accountancy consistent with the public health, safety and welfare.

- Other aggravating or mitigating factors.

It is necessary for the CBA to consider other aggravating or mitigating factors to provide the Board with the flexibility of considering other factors that are not otherwise addressed in the Board’s criteria. This criterion allows the individual and the Office of the Attorney General to provide additional evidence relevant in determining whether the individual is sufficiently rehabilitated to practice public accountancy consistent with the public health, safety and welfare.

These new criteria, together with the existing criteria, ensure that the CBA has clear guidance when considering that an individual is competent and willing to provide public accounting services in a manner consistent with the public health, safety and welfare prior to providing such services to consumers.

It is necessary to clarify the interplay between BPC section 480(b), which indicates that a board shall not deny a license if the individual “has made a showing of rehabilitation

pursuant to Section 482[.]" and BPC section 482(b)(2), which states that a board, "shall consider whether an applicant or licensee has made a showing of rehabilitation if [...] the board finds that the applicant is rehabilitated" pursuant to the board's rehabilitation criteria.

The proposed amendment to Section 99.1(b) clarifies that, for applicants, the CBA will consider the applicant to have made a showing of rehabilitation on the basis that the applicant did not violate parole or probation and, consequently, is entitled to a license. In other applicant cases, the CBA will apply its criteria for rehabilitation, as outlined in subdivisions (a)(1)-(13), prior to making its final determination of whether the applicant is sufficiently rehabilitated to practice public accountancy consistent with the public health, safety and welfare. As each case is unique, this language provides the CBA the ability to consider the totality of the facts and circumstances and evaluate each matter on a case-by-case basis for public protection.

The CBA has also proposed language that states that, "a showing of rehabilitation supports, but does not itself constitute, a finding that an individual is rehabilitated." The inclusion of this statement in CCR section 99.1(d) provides the CBA with flexibility in evaluating rehabilitation. With respect to license discipline or restoring a license pursuant to section 99.1(d), the Board will consider whether the licensee made a showing of rehabilitation, as required, under BPC section 482. A showing of rehabilitation, for purposes of existing licensees (whether subject to discipline or seeking a reinstatement of license or reduction of penalty) does not mean that the licensee is rehabilitated and entitled to a license, however. Thus, section 99.1(d) specifies that a showing of rehabilitation supports, but does not constitute, an unqualified finding that the licensee is rehabilitated.

#### **4. Adopt Section 99.2 Directly and Adversely Financial Crime Criteria of Title 16 of the California Code of Regulations.**

AB 2138 amends language in BPC section 480 requiring select DCA boards or bureaus, of which the CBA is included, to develop and adopt regulations that allow them to deny an application for licensure if the "applicant was convicted of a financial crime currently classified as a felony that is directly and adversely related to the fiduciary qualifications, functions, or duties of the business or profession for which the application is made."

DCA convened a working group of other impacted boards and bureaus to develop model language around the new statutory requirement. Unlike the substantial relationship requirement, which has been developed in case law, the "directly and adversely related" standard is new. To distinguish it from the closely related "substantially related" standard, and acknowledging that the standard applies to crimes that involve financial harm, the DCA's proposed language ties the direct and adverse impact to having a direct financial benefit to the applicant or another person or direct financial harm to the other person or entity. This language has been included in the

proposed regulatory language for CCR section 99.2 as adoption of regulations is required by AB 2138.

In developing the criteria governing the types of financial crimes that would be related to the practice of public accountancy, the CBA reviewed its records from a seven-year period (2012-2018) involving license denials and discipline where a factor in the CBA's decision to deny or discipline a license was a criminal conviction. It is reasonably necessary to include this information to provide clarity to applicants regarding what the CBA considers to be directly and adversely related to the fiduciary qualifications, functions, or duties of a certificate public accountant. In reviewing its records over this seven-year period, the CBA focused on records involving financially-related crimes such as embezzlement and theft, where the CBA previously found the crime was related to the practice of public accountancy. The CBA then reviewed the elements of the crimes and developed its regulatory criteria based on the common features of the crimes the CBA previously found to be related to the practice of public accountancy. Such crimes are contrary to the fiduciary relationship between accountant and client and, consequently, it is necessary to include the elements of the crimes to ensure that all such crimes are included.

### **Underlying Data**

1. March 17-18, 2016: CBA Item X.B.3 – Discussion and Possible Approval of Model Orders for Permanent Restricted Practice for Inclusion in Proposed Amendments to the California Board of Accountancy *Disciplinary Guidelines and Model Orders*
2. Minutes of the March 17, 2016 Enforcement Program Oversight Committee Meeting
3. Minutes of the March 17-18, 2016 CBA Meeting
4. May 19-20, 2016: CBA Item IX.B.3 – Discussion and Possible Action Regarding Proposed Changes to the Disciplinary Guidelines and Model Orders
5. Minutes of the May 19, 2016 Enforcement Program Oversight Committee Meeting
6. Minutes of the May 19-20, 2016 CBA Meeting
7. July 21-22, 2016: CBA Item II.C. – Discussion and Possible Action on Evaluating Criminal Convictions Involving Drugs and Alcohol and the Authority to Take Administrative Actions Pursuant to Business and Professions Code Sections 480, 490, and 5100
8. July 21-22, 2016: CBA Item IX.B.4 – Discussion and Possible Action Regarding Proposed Changes to the Disciplinary Guidelines and Model Orders (Title 16, California Code of Regulations Section 98) and Title 16, California Code of Regulations Section 99.1 Rehabilitation Criteria for Denials, Suspensions, Revocations, Restorations, Reduction of Penalty
9. Minutes of the July 21, 2016 Enforcement Program Oversight Committee Meeting
10. Minutes of the July 21-22, 2016 CBA Meeting

11. September 15-16, 2016: CBA Item VIII.A.2. – Discussion and Possible Action on Evaluating Criminal Convictions Involving Drugs and Alcohol and the Authority to Take Administrative Actions Pursuant to Business and Professions Code Sections 480, 490, and 5100
12. September 15-16, 2016: CBA Item VIII.B.3. – Discussion and Possible Action to Initiate a Rulemaking to Amend the Disciplinary Guidelines and Model Orders (Title 16, California Code of Regulations Section 98) and Title 16, California Code of Regulations Section 99.1 Rehabilitation Criteria for Denials, Suspensions, Revocations, Restorations, Reduction of Penalty
13. Minutes of the September 15, 2016 Committee on Professional Conduct Meeting
14. Minutes of the September 15, 2016 Enforcement Program Oversight Committee Meeting
15. Minutes of the September 15-16, 2016 CBA Meeting
16. November 17-18, 2016: CBA Item IX.A.3. – Discussion and Possible Action on Evaluating Criminal Convictions Not Involving Drugs and Alcohol, and the Authority to Take Administrative Actions Pursuant to Business and Professions Code Sections 480, 490, and 5100
17. November 17-18, 2016: CBA Item IX.B.3. – Discussion and Possible Action to Initiate a Rulemaking to Amend the Disciplinary Guidelines and Model Orders (Title 16, California Code of Regulations Section 98) and Title 16, California Code of Regulations Section 99.1 Rehabilitation Criteria for Denials, Suspensions, Revocations, Restorations, Reduction of Penalty
18. Minutes of the November 17, 2016 Committee on Professional Conduct Meeting
19. Minutes of the November 17, 2016 Enforcement Program Oversight Committee Meeting
20. Minutes of the November 17-18, 2016 CBA Meeting
21. January 26-27, 2017: CBA Item VIII.B.3 – Discussion and Possible Action to Initiate a Rulemaking to Amend the Disciplinary Guidelines and Model Orders (Title 16, California Code of Regulations Section 98) and Title 16, California Code of Regulations Section 99.1, Rehabilitation Criteria for Denials, Suspensions, Revocations, Restorations, Reduction of Penalty
22. Minutes of the January 26, 2017 Enforcement Program Oversight Committee Meeting
23. Minutes of the January 26, 2017 CBA Meeting
24. Assembly Bill No. 2138 approved September 30, 2018
25. January 17, 2019: CBA Item X.A.2. – Discussion and Possible Action Regarding Proposed Changes to Title 16, California Code of Regulations Section 98, Disciplinary Guidelines and Model Orders; Section 99, Substantial Relationship Criteria; and Section 99.1, Rehabilitation Criteria for Denials, Suspensions, Revocations, Restorations, Reduction of Penalty
26. Minutes of the January 17, 2019 Enforcement Program Oversight Committee Meeting
27. Minutes of the January 17, 2019 CBA Meeting
28. *Griffiths v. Superior Court* (2002) 96 CaJ.App.4<sup>th</sup> 757

29. *Sulla v. Board of Registered Nursing* (2012) 205 Cal.App.4<sup>th</sup> 1195
30. March 21-22, 2019: CBA Item X.C.2. – Discussion and Possible Action to Initiate a Rulemaking to Amend Title 16, California Code of Regulation Section 98, Disciplinary Guidelines and Model Orders; Section 99, Substantial Relationship Criteria; and Section 99.1, Rehabilitation Criteria for Denials, Suspensions, Revocations, Restorations, Reduction of Penalty, and to Adopt Title 16, California Code of Regulations Section 99.2, Directly and Adversely Financial Crime Criteria
31. Draft minutes of the March 21, 2019 Enforcement Program Oversight Meeting
32. Draft minutes of the March 21-22, 2019 CBA Meeting
33. “Disciplinary Guidelines and Model Orders” (10<sup>th</sup> Edition, 2019) as approved at the March 21-22, 2019 CBA Meeting

**Business Impact**

The CBA has made the initial determination that the proposed regulations will not have a significant adverse economic impact directly affecting businesses. This initial determination is based on the following facts or evidence/documents/testimony:

The CBA’s proposed amendments related to the implementation of AB 2138 will not impact businesses in California as the regulatory proposal strictly relates to applicants or licensees with criminal convictions. The proposed amendments to the Disciplinary Guidelines will only impact individuals disciplined for violations of the Accountancy Act or CBA regulations.

**Economic Impact Assessment**

This regulatory proposal will have the following effects:

- It will not create or eliminate jobs within the State of California as it only amends CBA regulations consistent with AB 2138 and updates the existing Disciplinary Guidelines. Therefore, the overall economic impact on jobs is deemed insignificant.
- It will not create new business or eliminate existing business within the State of California because the amendments to comply with AB 2138 apply to individuals with a criminal history and the update of the Disciplinary Guidelines affects individuals who have been disciplined for violations of the Accountancy Act or CBA regulations. Therefore, the overall economic impact on businesses is deemed as insignificant.
- It will not affect the expansion of businesses currently doing business within the State of California. This regulatory proposal merely updates CBA regulations to align with AB 2138 and updates the existing Disciplinary Guidelines that are used to discipline licensees for violations of the Accountancy Act or CBA regulations.

Therefore, the overall economic impact on the expansion of businesses is deemed insignificant.

- This regulatory proposal benefits the health and welfare of California residents because the updated Disciplinary Guidelines will improve clarity for staff, applicants, licensees and individuals involved in the disciplinary process. The proposed changes enable the CBA to meet its mandate to protect consumers by ensuring only qualified licensees practice public accountancy. The CBA can only speculate the anticipated changes that may occur as a result of AB 2138, however, the amendments provide clearer guidance and may expedite the CBA's licensing and enforcement processes.
- This regulatory proposal does not affect worker safety because the regulatory proposal does not relate to worker safety.
- This regulatory proposal does not affect the state's environment because the regulatory proposal does not relate to the state's environment.

### **Specific Technologies or Equipment**

This regulation does not mandate the use of specific technologies or equipment.

### **Consideration of Alternatives**

No reasonable alternative to the regulatory proposal would be either more effective in carrying out the purpose for which the action is proposed or would be as effective or less burdensome to affected private persons and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the law being implemented or made specific.

Set forth below are the alternatives which were considered and the reasons each alternative was rejected:

- Not adopting the regulations; however, the regulatory proposal is necessary to implement AB 2138. Further, the Disciplinary Guidelines have not been updated since 2013. New laws have been implemented requiring that the Disciplinary Guidelines be updated to reflect relevant guidance on potential violations. Further, outdated information should be made current, and improvements to clarity and consistency are necessary.
- The CBA considered alternate language in CCR section 99, subdivision (c)(4), to remove "personal judgment" from being considered when evaluating whether a crime or act of professional misconduct is relevant to the practice of public accountancy. The CBA discussed this matter and determined that the precedent is based on case law. The CBA ultimately decided to include the language in its proposed regulatory amendment for this reason.